IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 15TH JANUARY 2007 / 25TH PAUSHA 1928

Crl.MC.No. 2485 of 2006()

ST.6060/2005 of JUDL. MAGISTRATE OF FIRST CLASS COURT, VADAKKANCHERY

.....

PETITIONER/ACCUSED:

V. SITHARA, FILM ACTRESS, SREYAS,
MANGALASSERY LANE, PAPPANAMCODE P.O.,
TRIVANDRUM.

BY ADV. SRI.AVM.SALAHUDIN

RESPONDENTS/COMPLAINANT&STATE:

---

1. A. RAJU, S/O. ARUMUGHAM CHETTIYAR,
GOKUL DEVI HOUSE, THIRUVLWAMALA,
TRICHUR DISTRICT.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.G.SREEKUMAR (CHELUR)
SRI.SAJITH KUMAR KANGHINGHAT
PUBLIC PROSECUTOR SRI.THOMAS JOHN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 15/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2485 of 2006

Dated this the 15th day of January 2007

O R D E R

The petitioner is the accused in a prosecution under Section 138 of the Negotiable Instruments Act. Cognizance has been taken on the basis of the complaint filed by the respondent herein. The respondent, in paragraph 1 of the complaint, has averred that the cheque was issued by the accused to the complainant towards an amount of Rs.8,20,000/-, which was due to him. A notice of demand was issued prior to the launching of the prosecution. It had evoked a reply (copy of which is produced as Annexure A2). Signature in the cheque is admitted though a contention is raised that there was no transaction between the complainant and the accused. It was further alleged that a blank signed cheque was handed over to one Swamiji, who has expired. The complainant, it is suggested, had came into possession of the said blank signed cheque and was attempting to misutilise the same to stake a totally false claim. The petitioner has, now come to this court, with the prayer that the proceedings initiated against him under Section 138 of the

Negotiable Instruments Act may be quashed. The learned counsel for the petitioner raises two grounds to justify his prayer for issue of directions under Section 482 Cr.P.C.

2. Firstly, it is contended that there is no allegation that the cheque was issued for the due discharge of any legally enforcible debt or liability. That is the fundamental ingredient to establish the offence under Section 138 of the Negotiable Instruments Act. Such allegation having not been raised, the prosecution is liable to be quashed, it is urged. I am unable to accept such contention in as much as it is very clearly shown in paragraph 1 of the complaint that the cheque is issued towards an amount of Rs.8,20,000/- due to the complainant/respondent from the accused. In the wake of such specific assertion, I find no merit in the contention that the details of the said liability must have been pleaded by the complainant in the complaint. Unlike in a civil case, foundation of liability need not be pleaded and established in a prosecution under Section 138 of the Negotiable Instruments Act. It is sufficient if the crucial assertion is made that the cheque is issued for the due discharge of a legally enforcible debt/liability. In the wake of such specific

pleadings in paragraph 1, I find no merit in the contention raised.

3. The next contention raised by the learned counsel for the petitioner is that the presumption under Section 139 of the Negotiable Instruments Act is not available to the petitioner. The signature in the cheque is admitted. There is a specific assertion that the cheque was issued for the discharge of a liability of Rs.8,20,000/- due to the complainant from the accused. In the light of that specific assertion, the contention that the presumption under Section 139 of the Negotiable Instruments Act cannot be invoked and that the proceedings are liable to be quashed on that ground cannot also be accepted. I may hasten to observe that I am not intending to express any opinion on the question whether presumption under Section 139 of the Negotiable Instruments Act can be raised and if raised, has been discharged by the accused. It is for the parties to raise relevant contentions before the learned Magistrate. I take the view only that, at this stage invoking powers under Section 482 Cr.P.C, the prosecution does not deserve to be quashed.

4. As virtually there is no dispute in the proportions of law canvassed, I am not adverting to the precedents cited at the bar copiously to contend that the cheque must be alleged to be one issued for the discharge of a legally enforcible debt/liability and that presumption under Section 139 of the Negotiable Instruments Act is only a rebuttable presumption and can be drawn only when circumstances justify such drawal.

5. In the result, this Criminal Miscellaneous Case is dismissed. I reiterate, the dismissal of this Criminal Miscellaneous Case will not in any way fetter the rights of the petitioner to raise all appropriate and relevant contentions before the learned Magistrate.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006